

1 ULTRACARD, INC., 401(k) PLAN, an employee benefit plan (the
2 "Plan").¹

3 A. The parties admit that the Court has jurisdiction over
4 this action pursuant to ERISA § 502(e)(1), 29 U.S.C.
5 § 1132(e)(1), and that venue lies in the Northern District of
6 California pursuant to ERISA § 502(e)(2), 29 U.S.C.
7 § 1132(e)(2).

8 B. Without admitting or denying the violations alleged in
9 the Complaint, the parties agree to the entry of this Consent
10 Judgment & Order. The parties further agree that this Consent
11 Judgment & Order shall fully settle all claims of the Secretary
12 asserted in the Complaint.

13 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

14 1. Defendant Ultracard, Inc. and Daniel Kehoe shall
15 restore \$33,829.25 in losses and lost opportunity costs to the
16 Plan and its participants. The identified losses shall be
17 restored to the Plan's participants in accordance with the terms
18 set forth in Paragraph 6, *infra*.

19 2. Defendant Daniel Kehoe is permanently enjoined and
20 restrained from violating the provisions of Title I of ERISA, 29
21 U.S.C. §§ 1001-1191c.

22 3. Defendant Daniel Kehoe is hereby permanently enjoined
23 and restrained from future service as a fiduciary of, or service
24 provider to, any ERISA-covered employee benefit plan subject to
25 the exception set forth in Paragraph 5, *infra*.

26 4. Defendant Daniel Kehoe is hereby removed as a fiduciary.

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28 ¹ The Plan is named in the Secretary's Complaint solely as a party
necessary for complete relief pursuant to Fed. R. Civ. P. 19(a).

1 to the Plan subject to the exception set forth in Paragraph 5,
2 *infra*.

3 5. Defendant Daniel Kehoe shall remain a fiduciary of the
4 Plan solely to the extent necessary to make distributions to the
5 Plan's participants. Upon distribution of the Plan's assets to
6 the eligible participants, Defendant Daniel Kehoe shall be
7 removed from his position as fiduciary of the Plan.

8 6. Defendant Daniel Kehoe shall restore to the Plan the
9 amount of \$33,829.25 in losses as follows:

10 a. Defendant Daniel Kehoe shall remit \$33,829.25 to a
11 trust account in the name of "Ultracard Inc. 401k Plan" within
12 sixty (60) days of entry of an Order to this Consent Judgment.

13 b. Within ten (10) days after Defendant Daniel Kehoe
14 remits payment to the trust account as specified in Paragraph
15 6(a), *supra*, Defendant Daniel Kehoe will direct the distribution
16 of that amount to the Plan's participants in the amount listed
17 next to the name of each Plan participant in Exhibit A (attached
18 hereto).

19 c. To the extent that any of the identified participants
20 listed on Exhibit A cannot be located, Defendant Daniel Kehoe
21 shall:

22 1) Establish an individual retirement account or
23 annuity ("IRA") in the name of the missing participant for the
24 amount listed;

25 2) Establish an interest-bearing federally-insured
26 bank account in the name of the missing participant for the
27 amount listed; OR

1 3) Transfer the amount listed for the missing
2 participant to the appropriate state's unclaimed property fund.

3 4) Within fifteen (15) business days of making the
4 payments/distributions/transfers set forth in Paragraph 6 (a)
5 through (c), *supra*, Defendant Daniel Kehoe shall provide to
6 Plaintiff a copy of both sides of the remittance check and
7 other appropriate evidence demonstrating that the
8 payment/distribution/transfer has been made.

9 7. Defendant Daniel Kehoe hereby forfeits any interest he
10 may have in any amounts restored to the Plan as a result of this
11 Complaint and Consent Judgment & Order. In addition, a spousal
12 waiver has been executed by any person who claims or who may
13 claim through Defendant Daniel Kehoe any interest in any amounts
14 restored to the Plan under this Complaint and Consent Judgment &
15 Order. An executed copy of the spousal waiver, the terms of
16 which are incorporated into this Consent Judgment & Order by
17 reference, is attached as Exhibit B.

18 8. The Secretary and Defendants shall each bear their own
19 costs, expenses, and attorneys' fees incurred to date in
20 connection with any stage of this proceeding, including but not
21 limited to attorneys' fees which may be available under the
22 Equal Access to Justice Act, as amended.

23 9. Defendants expressly waive any and all claims of any
24 nature which they have or may have against the Secretary, the
25 Department of Labor, or any of its officers, agents, attorneys,
26 employees or representatives, arising out of or in connection
27 with the allegations contained in the Complaint on file in this
28

1 action, any other proceedings or investigation incident thereto
2 or based on the Equal Access to Justice Act, as amended.

3 10. Upon the restoration of \$33,829.25 in losses, as
4 outlined in Paragraph 6, *supra*, the Defendants shall be assessed
5 a penalty under ERISA § 502(1), 29 U.S.C. § 1132(1) in the
6 amount of twenty percent of the applicable recovery amount, or
7 \$6,658.39 ("Penalty Amount"). The Defendants waive the notice
8 of assessment and service requirement of 29 C.F.R. § 2570.83
9 and, within sixty days following payment as outlined in
10 Paragraph 6, *supra*, Defendant Daniel Kehoe shall pay the Penalty
11 Amount to the U.S. Department of Labor, by sending a certified
12 or cashiers check payable to the United States Department of
13 Labor (please write EBSA Case No. 70-011987(48) on the check)
14 to:

15 Regular Mail

16 U.S. Department of Labor
17 ERISA Civil Penalty
18 P.O. Box 70942
Charlotte, NC 28272-0942

19 For Overnight Courier (i.e., Federal Express)

20 U.S. Department of Labor
21 QLP Wholesale Lockbox NC0810
22 Lockbox #70942
1525 West WT Harris Blvd
Charlotte, NC 28262

23 11. All submissions to Plaintiff required by this Consent
24 Judgment shall be sent to the following address:

25 Regional Director
26 Employee Benefits Security Administration
27 San Francisco Regional Office
90 7th Street, Suite 11300
San Francisco, CA 94103

28 12. Should Defendant Daniel Kehoe file for personal

1 bankruptcy at any time prior to the time at which all losses to
2 the Plan have been restored or the required penalty has been
3 paid as set forth in Paragraph 6 and 10, supra, he shall
4 properly notice the Department of Labor of such filing.

5 13. Nothing in this Consent Judgment is binding on any
6 governmental agency other than the United States Department of
7 Labor.

8 14. This Court retains jurisdiction of this action for
9 purposes of enforcing compliance with the terms of this Consent
10 Judgment & Order.

11 15. By signing their names to this Consent Judgment &
12 Order, the parties represent that they are informed and
13 understand the effect and purpose of this Consent Judgment &
14 Order.

15 The Court directs the entry of this Consent Judgment &
16 Order as a final order.

17 IT IS SO ORDERED.

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19 Dated: 3/13/08

Ronald M. Whyte
District Court Judge

1 Entry of this Consent Judgment is hereby consented to:

2 Dated: 3/3/2008

JONATHAN L. SNARE
Acting Solicitor of Labor

3 LAWRENCE BREWSTER
4 Regional Solicitor

5 DANIELLE L. JABERG
6 Counsel for ERISA

7 By Cheryl L. Adams
8 Cheryl L. Adams
9 Trial Attorney

Attorneys for the Plaintiff

10 Defendants consent to the entry of this Consent Judgment.

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12 Dated: 12-7-07

Daniel Kehoe
13 Daniel Kehoe, in his
14 individual capacity and as
15 President of Ultracard, Inc.
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EXHIBIT A

UltraCard, Inc. 401(k) Plan

PARTICIPANT NAME	AMOUNT OWED FOR 401(k) DEFERRALS	Lost Interest Owed	Total Owed
Dafna Avinun	\$1,114.52	\$559.12	\$1,673.64
Karl A. Bergmann	\$1,107.72	\$559.12	\$1,666.84
Judy L. Burwell	\$1,412.64	\$559.12	\$1,971.76
Bert D. Cook, Jr.	\$2,218.32	\$559.12	\$2,777.44
Corrine T. Cox	\$2,218.32	\$559.12	\$2,777.44
Amelia Q. Ebreo	\$1,358.32	\$559.12	\$1,917.44
Kimberly Fahrenkrog	\$1,900	\$559.12	\$2,459.12
Samuel J. Falcone	\$3,791.63	\$559.12	\$4,350.75
Don Mann	\$1,058.32	\$559.12	\$1,617.44
Thomas R. Parkinson	\$1,813.80	\$559.12	\$2,372.92
John H. Rockdale	\$1,808.32	\$559.12	\$2,367.44
Mohamed Sheikh Yusuf	\$600	\$559.12	\$1,159.12
Ronald W. Sollenberger	\$2,041.64	\$559.12	\$2,600.76
Derek Yeo	\$2,314.40	\$559.12	\$2,873.52
George W. Zeissner	\$684.42	\$559.20	\$1,243.62
Grand Total	\$25,442.37	\$8,386.88	\$33,829.25

EXHIBIT B

WAIVER OF BENEFITS AND SPOUSAL CONSENT

I, Stephany Kehoe, am married to Daniel Kehoe, who is currently under investigation by the United States Department of Labor, and who is a participant in the ULTRACARD, INC., 401(k) RETIREMENT PLAN. In consideration of the Department of Labor's agreement to resolve its allegations against my spouse, and to the extent that my spouse opts to offset assets in his participant account in the ULTRACARD, INC., 401(k) RETIREMENT PLAN against his liability to the same, I renounce and agree not to pursue any claims or interest that may have accrued or vested to me, or may later accrue or vest to me in Daniel Kehoe's participant account as community property, as the spouse or beneficiary of Daniel Kehoe, or otherwise. I understand that as a result of my consent to this waiver, I may receive reduced benefits or distributions from Daniel Kehoe's participant account in the ULTRACARD, INC., 401(k) RETIREMENT PLAN.

Dated this 7th day of December, 2007.

Stephany Kehoe

Stephany Kehoe

1 I, CHRISTINE L. ESTRADA, am a citizen of the United States of America and am over eighteen years
2 of age. I am not a party to the within action; my business address is 90 7th Street, Suite 3-700 San
3 Francisco, California 94103. On 3/4/08, I served the within


4 **CONSENT JUDGEMENT & ORDER**

5 by placing a true copy thereof in a sealed government envelope with postage thereon, mailed in San
6 Francisco, California, addressed to:

7 Donald Kehoe
8 P.O. Box 468
9 Bend, OR 97709

10 I certify under the penalty of perjury under the laws of the United States of America that the foregoing
11 is true and correct. Executed on March 4, 2008.

12 Dated: 3/4/08

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14 CHRISTINE L. ESTRADA
15 Legal Assistant

16 OFFICE OF THE SOLICITOR
17 UNITED STATES DEPARTMENT OF LABOR
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